



DEPARTMENT OF THE ARMY
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT
600 ARMY PENTAGON
WASHINGTON DC 20310-0600



REPLY TO
ATTENTION OF

DAIM-FDF-E (420-49)

JAN 21 1999

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Privatization of Army Owned Utility Systems – Criteria for Exemptions

1. References:

- a. Department of Defense Reform Initiative Directive #49 – Privatizing Utility Systems, 23 Dec 98
- b. HQDA, OACSIM (DAIM-FDF) memorandum dated 23 Oct. 98, SAB.
- c. HQDA, OACSIM (DAIM-FDF-E) memorandum dated 3 Dec 97, subject: Policy and Procedures for the Privatization of Army Owned Utility Systems at Active Installations – UPDATE

2. The purpose of this memorandum is to provide updated guidance in accordance with DRID # 49 for requesting an exemption from privatization due to economic or security considerations, as provided for by reference 1a. This guidance is applicable to active and semi-active installations serving the Active, National Guard and Army Reserve Components. Reference memorandum 1b is hereby rescinded.

3. Subject to further guidance from the Office of the Secretary of Defense, the enclosed criteria will be used for requesting exemptions from privatizing installation utility systems on the basis of unique security reasons or when considered uneconomical.

4. The OACSIM point of contact for this action is Mr. Satish K. Sharma, DAIM-FDF-E, COMM (703) 428-7001, DSN 328-7001, e-mail: SHARMSK@HQDA.ARMY.MIL

Encl


For J. C. MENIG
Acting Assistant Chief of Staff
for Installation Management

DAIM-FDF-E (420-49)

SUBJECT: Privatization of Army Owned Utility Systems – Criteria for Exemptions

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POLICIES AND PROCEDURES FOR PRIVATIZATION
OF ARMY OWNED UTILITY SYSTEMS
AT ACTIVE INSTALLATIONS

Exemptions from Privatization

1. REFERENCES:

a. Department of Defense Reform Initiative Directive #49 – Privatizing Utility Systems, 23 Dec 98.

b. HQDA, OACSIM (DAIM-FDF-U) memorandum dated 3 Dec 97, subject: Policy and Procedures for the Privatization of Army Owned Utility Systems at Active Installations – UPDATE.

2. PURPOSE: This is to supplement Defense guidance for exempting from privatization those utility systems that would be uneconomic to privatize, or those for which security reasons exist not to privatize. This guidance is applicable to Active Army and Reserve Component installations. Utility systems at installations that have been designated for closure under the Base Realignment and Closure (BRAC) Act will be transferred/privatized in accordance with appropriate BRAC closure laws and agreements.

3. CRITERIA FOR EXEMPTIONS: Reference 1a requires that all Army utility systems be privatized except those needed for unique security reasons or those uneconomical to privatize. The Secretary of the Army alone is authorized to certify when a utility system is exempt from the DRID #49 requirement for either economic or security reasons. Installations shall apply the following criteria and procedures when requesting an exemption from privatization:

a. **ECONOMIC REASONS** – utility systems are considered to be uneconomical to privatize under this initiative when:

(1) **There is a demonstrated lack of market interest.** Market interest in privatizing the installation utility systems shall be determined by synopsisizing a public notice in the Commerce Business Daily (CBD), or the equivalent in over-seas areas, and other widely available public media. Interest may be created or enhanced by consolidating small or isolated sites together or with larger sites on a regional basis. When there is a lack of response from utility companies or other entities to a public notice of the intent to privatize, the system is considered uneconomical to privatize.

ACTION REQUIRED: No additional privatization study or economic analysis is required. Submit a copy of the public notice and a statement that there were no responses with the request for exemption. Also submit expressions of interest that were rejected or disqualified, if any.

End

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(2) The long-term cost to the Army as a result of privatization of a utility system would be greater than the long-term benefits, or the long-term cost to the Army for utility services provided will not be reduced. Based on an Economic Analysis (EA) of the life-cycle costs that considered the following economic circumstances, the installation shall take applicable actions:

ACTION REQUIRED:

(a) When the EA based on conceptual utility proposals has been completed: If the EA results in an estimated privatization cost of at least 25 percent higher than the “should-be costs” for the in-house option, the system shall be considered uneconomical to privatize. “Should-be costs” are the projected costs for the installation to continue to own the utility system, but operated and maintained at the level required of a potential utility provider. The request for exemption from privatization will include a summary of the EA showing that the system is uneconomical to privatize. This summary shall include the total costs for operation, maintenance, repairs, and major facility upgrades to meet applicable industry and environmental standards throughout the project life. Life-cycle cost analysis shall be conducted as specified in OMB Circular A-94. The U.S. Army Corps of Engineers (USACE) software program, ECONPAK, used for EA conforms to OMB Circular A-94.

(b) When an EA based on a Request for Proposals (RFP) is completed: If the EA results in an estimated privatization cost of up to 10 percent higher than the “should-be costs” for the in-house option, the installation or garrison commander shall determine whether privatization warrants further pursuit through negotiations. The request for exemption from privatization will include a summary of the EA as in subsection (a) above, and the commander’s decision not to make any further efforts to privatize. It should include a discussion of the factors considered in arriving at this decision.

(c) When a complete EA may not be required: A detailed privatization study and EA by a consultant is not required for systems serving remote location or those with minimal annual operation, maintenance & repair costs. For example, installations that expend less than a total of \$100,000 for a utility service, excluding the cost of purchased electricity, natural gas, or water, should publish a notice of intent to privatize in the CBD, or the equivalent in over-seas areas, and other widely available public media. Interest may also be created or enhanced by consolidating small or isolated sites together or with larger sites. If there is interest in privatizing, initiate procurement actions, making every effort to maximize competition under the Competition in Contracting Act. If there is no demonstrated market interest, see paragraph a (1), above.

(d) When the installation relies on federal power allocations: Installations that rely entirely or substantially on federal power allocations must include in their EA analysis consideration of whether privatization of the distribution system would result in the installation

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losing their allocations, causing higher electric rates. Ensure that the percentage of power supplied to the installation by such allocations, if less than 100 percent, is taken into account in the economic analysis. The request for exemption shall also include a written confirmation from the appropriate Federal Power Administration (FPA) of the impacts of the various privatization options considered on the federal power allocation. While the FPAs (Bonneville Power Administration, the Southwestern Power Administration, the Western Power Administration, and the Tennessee Valley Authority) are all part of the Department of Energy, the application of the policies on power allocations varies and future policy changes may support utility privatization.

(e) When the federal tax on "contribution in aid of construction" (CIAC) or other transfer taxes will have an adverse impact on the economic feasibility: At this time, the Army is unable to obtain a programmatic waiver of the CIAC tax or across-the-board legislative relief from the tax. Until such legislative relief is granted, installations shall assume responsibility for the tax and include it in the economic analysis of privatization as a cost to the government, even though the utility company is the responsible taxpayer. However, if the utility company is agreeable and time permits, the utility company may consider submitting a request for a letter ruling from the Internal Revenue Service (IRS) requesting a ruling that the transfers made in privatizing the utility system constitute nontaxable contributions of capital to Internal Revenue Code 118(a). To date, no such favorable rulings have been obtained. In addition, such a request to the IRS entails a user fee (filing fee), for which the taxpayer, i.e., the utility company, is responsible. Contact the DA Tax Advisor in the Contract Law Division of the Office of the Judge Advocate General for further advice concerning the tax aspects of utility transfers.

(f) When the installation is located in a State that has regulatory commission metering requirements: Several State commissions require that when a utility company assumes ownership of an existing distribution system that individual meters must be installed on all facilities and that the metering charges reflect the different type of individual rate classes assigned to each facility. This requirement may jeopardize the installation ability to competitively procure the utility commodity in the future. The EA must include the overall utility service bill resulting from compliance with these requirements to arrive at an appropriate privatization decision.

(g) When the installation utility demands are expected to increase significantly to accommodate a surge in base population or activity due to a national defense emergency or during mobilization. Some installations, depots and maintenance facilities may have contingency surge and war mobilization requirements that require additional or reserve capacity from a privatized utility system. Reserving capacity to meet the increased utility load expected during a surge or mobilization could incur an additional cost to the installation through increased utility rates. The EA will include all additional costs for reserving any additional surge capacity or mobilization requirements.

b. **UNIQUE SECURITY REQUIREMENTS** – The Army has determined that there are no

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known security requirements that would completely preclude the privatization of an entire installation utility system. However, there may be valid reasons for not pursuing privatization of portions of a utility system, if creates an unacceptable security risk to classified information or the defense mission of the installation. These circumstances do not require an economic study, but do require other documentation.

(1) Unique Security Requirements – General guidance.

ACTION REQUIRED: Submit an installation or garrison commander's statement describing the defense and national security missions that would be at risk or compromised under privatization of the installation utility system(s).

(2) Reliability of Local Utility. It may not be prudent to privatize a system to a single utility that is in serious financial difficulty, has a history of unreliability, or presents an unreasonable risk to the installation because of anticipated low priority, poor maintenance, or adversarial situation.

ACTION REQUIRED: The exemption request shall include documentation detailing why privatization should not proceed in spite of a favorable EA.

(3) Unique Health and/or Safety Requirement. An actual or potential threat to the health or safety of persons or property on or off the installation, that would jeopardize the defense and national security mission of the installation should some or all utility systems be privatized.

ACTION REQUIRED: The request for exemption shall include complete documentation describing and assessing the risks if privatization were to occur.

4. **PROCESSING:** All requests for exemption to retain a utility system by the government shall be submitted through the MACOM to HQDA, Office of the Assistant Chief of Staff for Installation Management, ATTN: DAIM-FDF, for staffing to the Secretariat for approval. Requests must include the documentation described above and the following information:

- a. Current status of the privatization study or process;
- b. Information on size of system and cost of ownership, including operations, maintenance, repair and investment funding required or programmed to bring the system up to standards;
- c. Contracting process used by installation to solicit interested parties; and
- d. Installation or Garrison Commander recommendation and MACOM endorsement.

POLICIES AND PROCEDURES FOR PRIVATIZATION
OF ARMY OWNED UTILITY SYSTEMS
AT ACTIVE INSTALLATIONS

Exemptions from Privatization

1. REFERENCES:

a. Department of Defense Reform Initiative Directive #9 – Privatizing Utility Systems, 10 Dec 97.

b. HQDA, OACSIM (DAIM-FDF-U) memorandum dated 3 Dec 97, subject: Policy and Procedures for the Privatization of Army Owned Utility Systems at Active Installations – UPDATE.

2. PURPOSE: This is to supplement Defense guidance for exempting from privatization those utility systems that would be uneconomic to privatize, or those for which security reasons exist not to privatize. This guidance is applicable to active and semi-active installations serving the Active Army, National Guard, and Reserve Components. Utility systems at installations that have been designated for closure under the Base Realignment and Closure (BRAC) Act will be transferred/privatized in accordance with appropriate BRAC closure laws and agreements.

3. CRITERIA FOR EXEMPTIONS: Reference 1a requires that all Army utility systems be privatized except those needed for unique security reasons or those uneconomical to privatize. The Secretary of the Army alone is authorized to certify when a utility system is exempt from the DRID #9 requirement for either economic or security reasons. Installations shall apply the following criteria and procedures when requesting an exemption from privatization:

a. **ECONOMIC REASONS** – utility systems are considered to be uneconomical to privatize under this initiative when:

(1) **There is a demonstrated lack of market interest.** Market interest in privatizing the installation utility systems shall be determined by synopsisizing a public notice in the Commerce Business Daily (CBD), or the equivalent in overseas areas, and other widely available public media. Interest may be created or enhanced by consolidating small or isolated sites together or with larger sites on a regional basis. When there is a lack of response from utility companies or other entities to a public notice of the intent to privatize, the system is considered uneconomical to privatize.

ACTION REQUIRED: No additional privatization study or economic analysis is required. Submit a copy of the public notice and a statement that there were no responses with the request for exemption. Also submit expressions of interest that were rejected or disqualified, if any.

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(2) The long-term cost to the Army as a result of privatization of a utility system would be greater than the long-term benefits, or the long-term cost to the Army for utility services provided will not be reduced. Based on an Economic Analysis (EA) of the life-cycle costs that considered the following economic circumstances, the installation shall take applicable actions:

ACTION REQUIRED:

(a) When the EA based on conceptual utility proposals has been completed: If the EA results in an estimated privatization cost of at least 25 percent higher than the "should-be costs" for the in-house option, the system shall be considered uneconomical to privatize. "Should-be costs" are the projected costs for the installation to continue to own the utility system, but operated and maintained at the level required of a potential utility provider. The request for exemption from privatization will include a summary of the EA showing that the system is uneconomical to privatize. This summary shall include the total costs for operation, maintenance, repairs, and major facility upgrades to meet applicable industry and environmental standards throughout the project life. Life-cycle cost analysis shall be conducted as specified in OMB Circular A-94. The U.S. Army Corps of Engineers (USACE) software program, ECONPAK, used for EA's conforms to OMB Circular A-94.

(b) When an EA based on a Request for Proposals (RFP) is completed: If the EA results in an estimated privatization cost of up to 10 percent greater than the "should-be costs" for the in-house option, the installation or garrison commander shall determine whether privatization warrants further pursuit through negotiations. The request for exemption from privatization will include a summary of the EA as in subsection (a) above, and the commander's decision not to make any further efforts to privatize. It should include a discussion of the factors considered in arriving at this decision.

(c) When a complete EA may not be required: A detailed privatization study and EA by a consultant is not required for systems serving remote location or those with minimal annual operation, maintenance & repair costs. For example, installations that expend less than a total of \$100,000 for utility services, excluding the cost of purchased electricity, natural gas, or water, should publish a notice of intent to privatize in the CBD, or the equivalent in overseas areas, and other widely available public media. Interest may also be created or enhanced by consolidating small or isolated sites together or with larger sites. If there is interest in privatizing, initiate procurement action, making every effort to maximize competition under the Competition in Contracting Act. If there is no demonstrated market interest, see paragraph a (1), above.

(d) When the installation relies on federal power allocations: Installations that rely entirely or substantially on federal power allocations must include in their EA analysis consideration of whether privatization of the distribution system would result in the installation

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losing their allocations, causing higher electric rates. Ensure that the percentage of power supplied to the installation by such allocations, if less than 100 percent, is taken into account in the economic analysis. The request for exemption shall also include a written confirmation from the appropriate Federal Power Administration (FPA) of the impacts of the various privatization options considered on the federal power allocation. While the FPAs (Bonneville Power Administration, the Southwestern Power Administration, the Western Power Administration, and the Tennessee Valley Authority) are all part of the Department of Energy, the application of the policies on power allocations varies and future policy changes may support utility privatization.

(e) When the federal tax on "contribution in aid of construction" (CIAC) or other transfer taxes will have an adverse impact on the economic feasibility: At this time, the Army is unable to obtain a programmatic waiver of the CIAC tax through legislative relief or other means. Until such legislative relief is granted, installations shall assume responsibility for the tax and include it in the economic analysis of privatization as a cost to the government. However, if the utility company is agreeable and time permits, the installation may consider submitting a request for a letter ruling from the Internal Revenue Service (IRS) to waive the CIAC tax. Contact the Headquarters, U.S. Army Corps of Engineers, Installation Support Center (formerly, U.S. Army Center for Public Works) for assistance in seeking a waiver on the basis of a public benefit.

(f) When the installation is located in a State that has regulatory commission metering requirements: Several State commissions require that when a utility company assumes ownership of an existing distribution system that individual meters must be installed on all facilities and that the metering charges reflect the different type of individual rate classes assigned to each facility. This requirement may jeopardize the ability to competitively procure the utility commodity separately and thereby share in the cost savings of procuring deregulated natural gas and electricity, resulting in higher monthly utility charges. Also, the Army must pay for the metering installation costs. The exemption request will include documentation of the regulatory commission requirements and an EA that includes installation utility bill impacts resulting from compliance with these requirements.

(g) When the installation utility demands are expected to increase significantly to accommodate a surge in base population or activity due to a national defense emergency or during mobilization. Some installations, depots and maintenance facilities may have contingency surge and war mobilization requirements that require additional or reserve capacity from a privatized utility system. Reserving capacity to meet the increased utility load expected during a surge or mobilization could incur an additional cost to the installation through increased utility rates. The EA will include all additional costs for reserving any additional surge capacity or mobilization requirements.

b. **UNIQUE SECURITY REQUIREMENTS** – The Army has determined that there are no known security requirements that would completely preclude the privatization of an entire

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installation utility system. However, there may be valid reasons for not pursuing privatization of portions of a utility system, as it create an unacceptable security risk to classified information or the defense mission of the installation. These circumstances do not require an economic study, but do require other documentation.

(1) Unique Security Requirements – General guidance.

ACTION REQUIRED: Submit an installation or garrison commander's statement describing the defense and national security missions that would be at risk or compromised under privatization of the installation utility system(s).

(2) Reliability of Local Utility. It may not be prudent to privatize a system to a single utility that is in serious financial difficulty, has a history of unreliability, or presents an unreasonable risk to the installation because of anticipated low priority, poor maintenance, or adversarial situation.

ACTION REQUIRED: The exemption request shall include documentation detailing why privatization should not proceed in spite of a favorable EA.

(3) Unique Health and/or Safety Requirement. An actual or potential threat to the health or safety of persons or property on or off the installation, that would jeopardize the defense and national security mission of the installation should some or all utility systems be privatized.

ACTION REQUIRED: The request for exemption shall include complete documentation describing and assessing the risks if privatization were to occur.

4. PROCESSING: All requests for exemption to retain a utility system by the government shall be submitted through the MACOM to HQDA, Office of the Assistant Chief of Staff for Installation Management, ATTN: DAIM-FDF, for staffing to the Secretariat for approval. Requests must include the documentation described above and the following information:

- a. Current status of the privatization study or process;
- b. Information on size of system and cost of ownership, including operations, maintenance, repair and investment funding required or programmed to bring the system up to standards;
- c. Contracting process used by installation to solicit interested parties; and
- d. Installation or Garrison Commander recommendation and MACOM endorsement.